

Supreme Court, U. S.

FILED

DEC 6 1976

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**In the Supreme Court of the
United States**

October Term, 1976

No.

76-765

NICHOLAS A. URDA,

Petitioner

vs.

**COMMONWEALTH OF PENNSYLVANIA
FARVIEW STATE HOSPITAL**

**PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE COMMON-
WEALTH OF PENNSYLVANIA**

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Petition

1

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1976

No.

NICHOLAS A. URDA,

Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA
FARVIEW STATE HOSPITAL

PETITION

Petitioner, Nicholas A. Urda, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Pennsylvania entered on September 7, 1976 in Nicholas A. Urda vs. Commonwealth of Pennsylvania; Farview State Hospital. That judgment and order finally denied the Petitioner's attempt to gain reinstatement to his position as a psychiatric security aid by rejecting further consideration of his challenges that the Act of August 5, 1941, P.L. 752, Section 904, 71 P.S. Sec. 741.904, Civil Service Act, commonly referred to as the Pennsylvania "Hatch Act", violated (1) United States Constitution Amendment I, Article I, Section 7, Pennsylvania Con-

Petition

stitution as an impermissible restriction on the right to engage in free speech and association; (2) United States Constitution Amendments I and XIV as being impermissibly broad; (3) United States Constitution Amendment XIV by virtue of discriminatory application of the discretion by state officials in terminating the Petitioner's employment; (4) United States Constitution Amendments I and XIV as being a vague and imprecisely devised statutory scheme. The Petitioner had requested a finding that the Act of August 5, 1941, P.L. 752, Section 904, 71 P.S. Section 741.904, Civil Service Act was unconstitutional and/or discriminatorily applied necessitating reinstatement of him to his prior level of employment.

*Opinions Below***OPINIONS BELOW**

The Supreme Court of Pennsylvania has issued an order in this case, a copy of which appears as Appendix A to this Petition, at page 11, infra. The opinion has not yet been reported.

The Commonwealth Court of Pennsylvania has issued an order in this case, a copy of said opinion and order appears as Appendix B to this Petition, at page 12, infra. This opinion is reported in — Pa. Commonwealth Ct. —, 353 A.2d 61 (1975).

JURISDICTION

The order or judgment of the Supreme Court of the Commonwealth of Pennsylvania was entered on September 8, 1976, see Appendix A, page 11 (infra). This Petition for Certiorari was filed less than 90 days from the date aforesaid. The jurisdiction is invoked under 28 U.S.C. Sec. 1257(3).

QUESTIONS PRESENTED

The Commonwealth of Pennsylvania maintains a legislative scheme similar to the federal Civil Service Act commonly known as the "Hatch Act". Under the Act of August 5, 1941, P.L. 752, Section 904, 71 P.S. Sec. 741-904, political activity is prohibited by those individuals within the purview of that legislative scheme. The Petitioner was discharged for a violation of these provisions.

The questions thereby arising are:

1. Whether or not the appellant, as a generally aggrieved party, has "standing" to contest the statutory scheme of the Civil Service Act on the basis of facial invalidity?
2. Whether or not the "compelling State interest" test must be applied when considering legislation which seriously infringes upon First Amendment rights of the United States Constitution?
3. Whether or not the Civil Service Act's sweeping restrictions on freedom of expression and association are over-broad and not compelled by any paramount, governmental interest.
4. Whether or not discriminatory application has been shown which violates due process and equal protection dictates demanding a voiding of the proceedings below?

Questions Presented

5. Whether or not the provisions of Section 904 of the Civil Service Act of the Commonwealth of Pennsylvania are impermissibly vague?

In the only full opinion in this case the Commonwealth Court rejected question number 1, and did not reach the full import of the additional questions involved.

Constitutional Provisions Involved

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment I—United States Constitution:

“Congress shall make no law . . . abridging the freedom of speech.”

Amendment XIV (1):

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

STATEMENT OF FACTS

The facts relevant to the questions presented by this Petition are essentially uncontested and therefore may be introduced to court in a summary fashion.

In the early spring of 1975, the Petitioner, Nicholas A. Urda, announced that he would be a candidate in the May, 1975 primary election for the office of Magistrate, District Justice of the Peace. And on February 24, 1975 executed the affidavit and loyalty oath to petitions to have his name as candidate placed on the official ballot of both the Democratic and Republican parties, paid the requisite filing fees and on March 4, 1975, filed both petitions with the Board of Elections of Susquehanna County, Pennsylvania (N.T. 71a). As a result of his actions, the Petitioner was notified that he was in violation of the Act of August 5, 1941, P.L. 752, Section 904, 71 P.S. 741-904, Civil Service Act, commonly referred to as the Pennsylvania "Hatch Act", and he was discharged.

The dismissal of the Petitioner was solely because of his outside political activities without regard to the performance of his duties or qualifications. Further, prior activities by the Petitioner and others similarly employed has been totally disregarded despite the extent to which this evidence clearly indicates discriminatory application of these provisions.

REASONS FOR GRANTING THE WRIT

1. The entire concept of the "Hatch Act" and similar legislative schemes demand review, as well as this Court's rulings in *Broadrick et al. vs. Oklahoma*, 413 U.S. 601, 93 S.Ct. 2908 (1973), and *United States Civil Service Commission et al. vs. National Association of Letter Carriers, AFL-CIO, et al.*, 413 U.S. 548, 93 S.Ct. 2880 (1973). The entire scheme of Civil Service Enactments which are constantly covering more and more employees at the state and federal levels results in the virtual elimination of these individuals from the active political scene and in essence reduces these individuals to one-half citizens eliminating a significant portion of their First Amendment privileges.

2. The increased numbers of personnel on the Civil Service rolls, by having their political activity restricted, have increased the amount of apathy in the political processes as those who are prohibited from being as politically active lose substantial interest in the political process and fail to remain the integrated and integral portions of the political scene.

3. Within any question involving the First Amendment, the impact upon the population as a whole is perhaps greater than any other constitutional provision. When the inherently imprecise and vague language used in the challenged civil service scheme is considered in light of its wholesale First Amendment restrictions, the impact can be, and is, devastating. The circumstances command

Reasons for Granting Writ

a consideration by this Court of this scheme; particularly in light of *Mancuso v. Taft*, 476 F.2d 187 (1973).

4. Throughout the history of this Court, any restrictions of First Amendment rights have been zealously scrutinized by this Court. It is precisely again that Amendment which is, and has been, subverted in this situation and demands review of the prior rulings of this and other courts sustaining this legislative scheme and further recognition of those cases such as *Mancuso*, recognizing the inherent impairment of basic rights through such legislation.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and order of the Supreme Court of Pennsylvania.

CODY H. BROOKS
 HENKELMAN, McMENAMIN,
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 STEPHEN G. BRESSET
 CONWAY, BARNA & SPALL
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Appendix A

APPENDIX A

SUPREME COURT OF PENNSYLVANIA
Eastern District

Philadelphia, 19107
 September 8, 1976

In re: Commonwealth of Pennsylvania
Farview State Hospital v. Nicholas A. Urda, Peti-
tioner.
No. 2428 Allocatur Docket

"Petition Denied this 7th day of September,
1976. Per Curiam"

*Appendix B***APPENDIX B**

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

No. 1318 C.D. 1975

Commonwealth of Pennsylvania,
Farview State Hospital

v.

Nicholas A. Urda,
Appellant

Before:

Honorable James S. Bowman, President Judge

Honorable James C. Crumlish, Jr., Judge

Honorable Harry A. Kramer, Judge

Honorable Roy Wilkinson, Jr., Judge

Honorable Glenn E. Mencer, Judge

Honorable Theodore O. Rogers, Judge

Honorable Genevieve Blatt, Judge

Argued: February 3, 1976—Harrisburg

*Appendix B***OPINION**

Opinion by Judge Rogers, Filed: March 9, 1976

The appellant, Nicholas A. Urda, has appealed from a decision of the Civil Service Commission upholding his removal from his position in the classified civil service of Psychiatric Security Aide I attached to the Farview State Hospital of the Department of Welfare.

The appellant's removal was for violation of Section 904 of the Civil Service Act, Act of August 5, 1941, P.L. 752, *as amended*, 71 P.S. §741.904, which reads pertinently:

"No person in the classified service shall . . . take an active part in political management or in political campaigns . . . nor shall he circulate or seek signatures to any nominations or other petition required by any primary or election law. . . ."

Mr. Urda, while employed in his civil service position at Farview State Hospital, executed the affidavit and loyalty oath and filed petitions to have his name printed on the ballots of both the Democratic and Republican parties as a candidate for the office of District Justice in the Municipal Primary for the year 1975. While, in Mr. Urda's words at the hearing "[m]y circulators did all the circulating" of the petitions, Mr. Urda dispensed printed campaign cards (one of which, by unknown agency, found its way to a Farview State Hospital bulletin board), placed newspaper advertising and engaged, as his counsel expressed it, "in personal politicing while running for office."

Appendix B

Mr. Urda principally says that the prohibition of Section 904 against active participation in political campaigns unconstitutionally deprives or interferes with his right to speech and association guaranteed by the First Amendment to the United States Constitution and Article 1, Section 7 of the Pennsylvania Constitution, citing many Federal Court decisions not involving statutory restrictions on political activities of civil service employes. A short, but not intended to be abrupt, answer to these contentions, is that the United States Supreme Court has found similar enactments to be valid against the same arguments made with equal fervor in *United Public Workers of America v. Mitchell*, 330 U.S. 75 (1947); *United States v. Wurzbach*, 280 U.S. 396 (1929), and *Ex parte Curtis*, 106 U.S. 371 (1882). As Judge Crumlish's concurring opinion in *Wasniewski v. Civil Service Commission*, 7 Pa. Commonwealth Ct. 166, 174, 299 A.2d 676, 680 (1973), cogently points out, there is much to be said for less restrictive legislation but nothing which this Court can do in the face of such impressive authority to the contrary.

The appellant's additional argument based on the Fifth and Fourteenth Amendments to the United States Constitution, Article 1, Section 26 of the Pennsylvania Constitution and Section 905(a) of the Civil Service Act, 71 P.S. §741.905(a), all prohibiting discrimination, is equally without merit. The appellant at the hearing gave instances of asserted violations of Section 904 by other State employes. A reading of the record demonstrates that this testimony was ineffective. The instances mentioned lacked proof in some instances that the actors were in the civil service or, where they were, that they did more

Appendix B

than personally espouse another's candidacy or accept a part-time position of employment with a public agency.

The appellant's final contention that Section 904 is void for vagueness also fails. "No person in the classified service shall . . . take an active part . . . in political campaigns" seems as definite to us as the fact that the appellant engaged in two campaigns in the same primary election.

ORDER

And Now, this 9th day of March, 1976, the order of the State Civil Service Commission is affirmed and the appeal of Nicholas A. Urda is dismissed.

(s) Theodore O. Rogers
Theodore O. Rogers, J.